In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1575

ERNEST LEVINE, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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1. Petitioner, a 52 year-old certified public accountant, brought this action for $600,000 damages against the United States and the Commissioner of Internal Revenue alleging that he had been denied employment in the Internal Revenue Service on account of his age. The district court dismissed the action for failure to state a claim on which relief can be granted and the court of appeals, after deny-

ing petitioner's motion for summary reversal (Pet. App. B., p. 1), dismissed the appeal.

2. The decisions below are correct and further review is unwarranted. Moreover, the petition reveals that in response to petitioner's application for employment, the Internal Revenue Service informed him that the only vacancies available in his area were in Bakersfield and El Centro and offered to consider petitioner for employment in those cities (Pet. 4). Accordingly, petitioner's complaint is without factual basis.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1972.

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